Koh Siak Poo v Med-Bumikar Mara Sdn Bhd

HIGH COURT (ALOR STAR) — CIVIL SUIT NO 25-229-86
KC VOHRAH J
27 AUGUST 1994

Hire Purchase *— Repossession — Service of notice — Methods of proof — Wrongful seizure — Whether breach of contract — Contracts Act 1950 — Hire Purchase Act 1967 ss 16, 43 & Sch 4*

Contract *— Damages — Wrongful seizure of goods under hire purchase — Loss of right to continue hiring tractor — Loss of use of other related vehicles and wages incurred — Cost of hiring replacement — Remoteness*

The plaintiff hired a tractor under a hire-purchase agreement ('the agreement') with Credit Corp (Malaysia) Bhd ('CCM') on 5 January 1980. On 4 October 1981, the defendant, the authorized agent of CCM, seized the tractor and subsequently, on 12 October 1981, CCM assigned its rights under the agreement to the defendant ('the assignment'). On 12 or 13 October 1981, the plaintiff was served with a undated notice of intention to repossess issued by CCM in the form set out in the 4th Schedule of the Hire Purchase Act 1967 ('the Act'). The plaintiff alleged that the seizure by the defendant was wrongful as there was non-compliance with s 16 of the Act, ie the requisite 21 days' notice was not given, and claimed for damages. The defendant alleged that before the assignment, CCM had sent four 4th Schedule notices for default in payments and therefore, the power of seizure was properly exercised. The plaintiff denied receiving any of the four notices. The question whether the seizure was proper or wrongful depended on whether the four notices were served on the plaintiff, as the defendant was not relying on the notice sent by CCM after seizure had been made.

Held, allowing the plaintiff's claim in part:

(1) The onus was on the defendant to show that the notices were served on the plaintiff as required under s 16(1), either by personal delivery or registered post at his last-known address, in accordance with s 43 of the Act. The affidavit or oral evidence of an owner or hirer, or his servant or agent, as to the service of the notice was admissible as prima facie proof of the service of the notice. However, in this case, no such evidence was adduced.

(2) The damages claimed were based on breach of contract, ie breach of s 16 of the Act which was a necessary term of the agreement, and the plaintiff was entitled to damages under s 74 of the Contracts Act 1950.

(3) The loss of the right to continue hiring the tractor until the plaintiff became its owner was surely within the contemplation of the parties. Therefore, the plaintiff was entitled to receive

RM1,252, ie the market value of the tractor (RM25,000) less the balance owed by the plaintiff under the agreement (RM23,747.94).

(4) The plaintiff's claims for the cost of hiring lorries which were to be used together with the tractor and which could not be used due to the unavailability of the tractor, and workers' wages, were disallowed as the defendant had no knowledge that the tractor was being used in a special way with other vehicles.

(5) The claim for the cost of hiring a replacement tractor was allowed for a period of 40 days at RM100 per day. Interest was awarded on the judgment sum at 4%pa from the date of writ to the date of judgment and at 8%pa from the date of judgment to the date of satisfaction.

Obiter:

(1) Section 44 of the Act does not override the provisions of the Evidence Act 1950 as to the exclusion of hearsay evidence; it merely allows, procedurally, for the evidence as to the delivery, posting or service of any notice to be given either orally or through an affidavit by the person who himself effected the delivery, posting or service of the notice.

(2) A 4th Schedule notice, if served on the hirer, remains effective so long as the arrears, including interest on overdue instalments, remain unpaid, and the owner can repossess the goods.

(3) Had the tractor not been sold by the defendant, the court would have ordered it to be returned to the plaintiff in which case the plaintiff would have been obliged to continue paying his monthly instalments as agreed in the agreement.

[Bahasa Malaysia summary

Plaintif telah menyewa sebuah traktor di bawah suatu perjanjian sewa-beli ('perjanjian itu') dengan Credit Corp (Malaysia) Bhd ('CCM') pada 5 Januari 1980. Pada 4 Oktober 1981, defendan, agen diberikuasa CCM, telah merampas traktor itu dan kemudiannya, pada 12 Oktober 1981, CCM telah menyerahhak haknya di bawah perjanjian itu kepada defendan ('penyerahhakan itu'). Pada 12 atau 13 Oktober 1981, plaintif telah disampaikan dengan suatu notis mengambil milikan yang tidak bertarikh yang dikeluarkan oleh CCM mengikut bentuk yang ditentukan di dalam Jadual Keempat Akta Sewa-Beli 1967 ('Akta itu'). Plaintif mengatakan bahawa perampasan itu adalah salah kerana s 16 Akta itu tidak dipatuhi, iaitu tempoh notis 21 hari yang diperlukan itu tidak diberikan, dan menuntut ganti rugi. Defendan mengatakan bahawa sebelum penyerahhakan itu, CCM telah menghantar empat notis di bawah Jadual Keempat kerana berlaku keingkaran bayaran dan oleh itu, kuasa perampasan itu telah digunakan dengan betul. Plaintif

menafikan bahawa beliau telah menerima satupun daripada empat notis itu. Soalan sama ada perampasan itu betul atau salah bergantung pada sama ada empat notis itu telah disampaikan ke atas plaintif, kerana defendan tidak bergantung pada notis yang dihantar oleh CCM selepas rampasan itu dibuat. A

Diputuskan, membenarkan sebahagian daripada tuntutan plaintif: B

(1) Adalah menjadi tanggungjawab defendan untuk menunjukkan bahawa notis tersebut telah disampaikan ke atas plaintif seperti yang diperlukan di bawah s 16(1), mengikut s 43 Akta itu, sama ada melalui penyampaian peribadi ataupun pos berdaftar ke alamatnya yang terakhir diketahui. Keterangan afidavit atau lisan seseorang pemunya atau penyewa, atau pekerja atau agennya, mengenai penyampaian notis itu boleh diterima sebagai bukti prima facie penyampaian notis itu. Bagaimanapun, di dalam kes ini, keterangan sedemikian tidak dikemukakan. C

(2) Ganti rugi yang dituntut itu adalah berdasarkan kemungkiran kontrak, iaitu kemungkiran s 16 Akta itu yang merupakan suatu terma yang perlu di dalam perjanjian itu, dan plaintif berhak mendapatkan ganti rugi di bawah s 74 Akta Kontrak 1950. D

(3) Kehilangan hak untuk terus menyewa traktor itu sehingga plaintif menjadi pemunya traktor itu tentunya di dalam fikiran pihak-pihak. Oleh itu, plaintif berhak menerima RM1,252, iaitu harga pasaran traktor itu (RM25,000) tolak baki wang yang dihutang oleh plaintif di bawah perjanjian itu (RM23,747.94). E

(4) Tuntutan plaintif untuk kos menyewa lori yang sepatutnya digunakan dengan traktor itu dan yang tidak dapat digunakan kerana ketiadaan traktor itu, dan upah pekerja, tidak dibenarkan kerana defendan tidak tahu bahawa traktor itu sedang digunakan dalam cara khas bersama dengan kenderaan lain. F

(5) Tuntutan untuk kos menyewa sebuah traktor pengganti dibenarkan untuk tempoh 40 hari pada RM100 sehari. Faedah diawardkan atas jumlah penghakiman pada 4% setahun dari tarikh writ ke tarikh penghakiman dan pada 8% setahun dari tarikh penghakiman ke tarikh penyelesaian. G

Obiter: H

(1) Seksyen 44 Akta itu tidak mengatasi peruntukan Akta Keterangan 1950 berkenaan dengan ketidakboleh terimaan keterangan dengar cakap; ia semata-matanya membolehkan, secara prosedur, keterangan mengenai penghantar-serahan, pengeposan atau penyampaian sebarang notis itu diberikan sama ada secara lisan atau melalui suatu afidavit oleh orang yang telah melakukan penghantar-serahan, pengeposan atau penyampaian notis itu sendiri. I

(2) Sesuatu notis di bawah Jadual Keempat, jika disampaikan ke atas penyewa, terus berkesan selagi tunggakan, termasuk faedah atas bayaran ansuran yang terlewat, masih tidak dibayar, dan pemunya boleh mengambil milikan barangan itu.

(3) Sekiranya traktor itu tidak dijual oleh defendan, mahkamah akan memerintahkan supaya ianya dipulangkan kepada plaintif, dan di dalam keadaan sedemikian, plaintif berkewajipan untuk terus membayar bayaran ansuran bulanannya seperti yang dipersetujui di dalam perjanjian itu.]

Notes

For cases on hire purchase, see 7 *Mallal's Digest* (4th Ed) paras 1856–1936; [1989] Mallal's Digest 892–894; [1991] Mallal's Digest 1204–1207; [1992] Mallal's Digest 1068–1073; [1993] Mallal's Digest 858–859.

Cases referred to

Aruna Mills v Dhanrajmal Gobindram [1968] 1 QB 655; [1968] 1 All ER 113; [1968] 2 WLR 101 (folld)

Hadley v Baxendale (1854) 9 Ex 341 (folld)

Koufos v Czarnikow [1969] 1 AC 350; [1967] 3 All ER 686; [1967] 3 WLR 1491 (folld)

Teoh Kee Keong v Tambun Mining Co Ltd [1968] 1 MLJ 39 (folld)

United Manufacturers Sdn Bhd v Sulaiman bin Ahmad & Anor [1989] 1 MLJ 482 (refd)

Victoria Laundry (Windsor) Ltd v Newman Industries Ltd [1949] 2 KB 528; [1949] 1 All ER 997 (folld)

Legislation referred to

Contracts Act 1950 s 74
Evidence Act 1950 s 32
Hire Purchase Act 1967 ss 16(1), 43, 44, 4th Schedule, 5th Schedule

Khor Chai Kuan (*Khor Chai Kuan & Co*) for the plaintiff.
Jeffrey Tan (*Jeffrey Tan & Co*) for the defendant.

Cur Adv Vult

KC Vohrah J: When a hirer of goods breaches a hire-purchase agreement relating to the payment of instalments of sums of money, the owner of the goods may take possession of the goods if he complies with s 16(1) of the Hire Purchase Act 1967 (Rev 1978) ('the Act').

The owner has the power to take possession of the goods comprised in the hire-purchase agreement if there had been two successive defaults of payment or a default in respect of the last payment and the owner has served on the hirer a notice, in writing, in the form set out in the 4th Schedule to the Act (commonly called the 4th Schedule notice) and the

period fixed by the notice has expired. The period shall not be less than 21 days after the service of the notice. A

The defendant had earlier sold an Ursus Agricultural Tractor ('the said tractor') to Credit Corp (Malaysia) Bhd ('CCM'). The plaintiff under a hire-purchase agreement ('the said agreement') with CCM on 5 January 1980 was let the said tractor, where he agreed to pay RM41,800. He made a down payment of RM13,000 and agreed to pay 24 instalments of RM1,200 per month. B

Some 21 months after the said agreement was entered into, on 4 October 1981, the defendant, the authorized agent of CCM, seized the said tractor. Shortly after that, on 12 October 1981, CCM assigned its rights under the said agreement to the defendant. C

The plaintiff telephoned someone in CCM and inquired from that person the reason for the seizure of the said tractor and indicated that if he was in arrears he would pay the arrears. According to the plaintiff, he was informed that CCM was not aware of the seizure. He then wrote a letter to CCM requesting for information as to the amount due on the said tractor and another tractor which he had also taken on hire purchase so that he could settle the accounts on both tractors. Curiously, on 12 or 13 October 1981, he was then served with a notice of intention to repossess issued by CCM. This was an undated 4th Schedule notice (B1) showing RM1,200 as arrears at 9 October 1981 which had to be paid on or before 30 October 1981. But it will be remembered that the said tractor was seized on 4 October 1981. D E

The plaintiff's complaint is that there was non-compliance with s 16 of the Act and, therefore, the seizure by the defendant was wrongful and he had been wrongfully deprived of the tractor. He claimed that he had been prevented from carrying out his work as a contractor and deprived of the profits he would otherwise have made and he thereby suffered loss. He claimed for damages. F

The defendant claimed that CCM (before CCM assigned its rights under the said agreement to it) had sent four 4th Schedule notices of intention to repossess (D4A–D) for default payments, for arrears as at 8 August 1980, 6 January 1981, 17 March 1981 and 6 July 1981, respectively, and therefore, there was a proper exercise of the power of seizure of the vehicle. G

The plaintiff denied he received any of the four notices (D4A–D).

Thus to the question whether the seizure was proper or wrongful, it has to be determined whether the notices D4A–D were served on the plaintiff, it being clear that the defendant is not relying on B1, the notice sent by CCM after seizure had been made. H

Service of 4th Schedule notice I

The onus is on the defendant to show that the 4th Schedule notices of intention to repossess the said tractor, D4A–D, and specifically D4D, were served on the plaintiff as required under s 16(1), bearing in mind that

A a 4th Schedule notice if served on the hirer remains effective so long as the arrears of instalments including arrears of interest due on overdue instalments remain payable and unpaid and that the owner of the goods can repossess the goods (see *United Manufacturers Sdn Bhd v Sulaiman bin Ahmad & Anor* [1989] 1 MLJ 482). The service of the notice has, however, to be in the manner specified in paras (a) or (c) of s 43 of the Act, either by personal delivery of the notice on the plaintiff or by registered post addressed to him at his last-known place of abode or business. And s 44 provides that the affidavit or oral evidence of an owner or his servant or agent, or of a hirer, as to the delivery, posting or service of, inter alia, any notice required to be served is admissible as prima facie proof of the service of the notice. It has to be noted that s 44 does not purport to override the provisions of the Evidence Act 1950 as to the exclusion of hearsay evidence; it merely allows, procedurally, for the evidence as to the delivery, posting or service of any notice to be given either orally or through an affidavit by the person who himself effected the delivery, posting or service of the notice.

All notices, D4A–D, were purportedly sent by CCM. What was stated by DW2, the branch manager of CCM, was that he executed on behalf of CCM the said agreement entered into between CCM and the plaintiff. He said that notices D4A–D were issued by CCM to the plaintiff for the said tractor and that it was normal office procedure that whenever an account was overdue by two months, the notice would be sent out by registered mail. It will be noticed that there was merely an assumption that the notices were so sent to the plaintiff. No evidence through the persons who handled the posting of the notices or, in their absence, for good reason, through records under s 32 of the Evidence Act 1950, was shown that indeed the notices were posted by registered post. It has to be noted that DW2 admitted that B1, the 4th Schedule notice issued to the plaintiff by CCM (after the tractor had been seized by the defendant), was issued in error by a clerk in CCM after the property had passed to the defendant by assignment. That is precisely the problem — CCM may have omitted sending the notices D4A–D by registered mail as required. If indeed they were posted by registered post, the person or persons who effected the same should so state by oral evidence or through affidavits. Clearly the defendant has not discharged the onus of proof that the notices were sent to the plaintiff.

That being so, I hold that the defendant had no right to exercise any power of repossession of the tractor and that the seizure of the tractor was wrongful.

Damages

The plaintiff is claiming an improbable sum of over RM500,000 as damages in this case resulting from the seizure of the said tractor. The action was originally filed in the sessions court and amongst the prayers was one for the return of the said tractor. But it appears that when it took a long time for the case to be heard in the sessions court, the plaintiff felt the quantum

of damages was rising day by day and that the increasing amount exceeded the jurisdiction of that court and so he had the case transferred to the High Court. The plaintiff has, however, at the trial, abandoned the prayer for the return of the said tractor.

The plaintiff claimed for 'general' and 'special' damages and he particularized the 'special damages' as follows:

Particulars

(a) As a result of loss of use of the said tractor for 11 days, wages were paid to workers at RM480 per day — RM5,280

(b) Hire of four lorries at RM480 per day for 11 days — RM5,280

(c) (i) Hire of tractor at RM130 per day (from 15 October 1981 to end of 1985)

(ii) Hire of tractors at RM150 per day (from January 1986 to end of 1987)

Senior counsel for the plaintiff in his submission merely relied on the losses in items (a)–(c) as set out in the pleadings as the plaintiff's measure of damages that is being claimed. In my view, the plaintiff may to a certain extent rely on the loss in item (c) and he may, although he has not so claimed, legitimately claim the loss of the right to continue hiring the said tractor under the said agreement. But the plaintiff cannot claim for the losses in items (a) and (b) as such losses were not within the contemplation of the parties.

The damages claimed are based on breach of contract. The wrongful seizure of the said tractor is a breach of a term of the said contract of hire purchase as the provision under s 16 of the said Act as to service of 4th Schedule notices is an express provision of law and is a necessary term of the said agreement; and the plaintiff is entitled to sue for damages for breach of contract under s 74 of the Contracts Act 1950.

Section 74 reads as follows:

(1) When a contract has been broken, the party who suffers by the breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from the breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

(2) Such a compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

(3) ...

Explanation — In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

It was pointed by Ong Hock Thye FJ in the Federal Court case of *Teoh Kee Keong v Tambun Mining Co Ltd* [1968] 1 MLJ 39 at p 40 that s 74(1) of

A the Contracts (Malay States) Ordinance 1950 (the Act was known as that before its revision) is the statutory enunciation of the rule in *Hadley v Baxendale* (1854) 9 Ex 341. His Lordship quoted [at p 40] the rule in the words of the English court at p 354 which lays down the main principles as follows:

B > Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered as either arising naturally, ie according to the usual course of things, from such breach of contract itself, or such as may be supposed to have been in the contemplation of both parties, at the time they made the contract, as the
C > probable result of the breach of it.

Ong Hock Thye FJ also adverted to another case for the more compendious terms of the rule and the restatement of the rule by Asquith LJ in *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528 at pp 539–540; [1949] 1 All ER 997 at pp 1002–1003:

D > (1) It is well settled that the governing purpose of damages is to put the party whose rights have been violated in the same position, so far as money can do so, as if his rights had been observed: (*Sally Wertheim v Chicoutimi Pulp Co* [1911] AC 301). This purpose, if relentlessly pursued, would provide him with a complete indemnity for loss de facto resulting from a particular breach, however improbable, however unpredictable.
E > This, in contract at least, is recognized as too harsh a rule. Hence,
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> (2) In cases of breach of contract the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach.
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> (3) What was at that time reasonably so foreseeable depends on the
F > knowledge then possessed by the parties or, at all events, by the party who later commits the breach.
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> (4) For this purpose, knowledge 'possessed' is of two kinds; one imputed, the other actual. Everyone, as a reasonable person, is taken to know the 'ordinary course of things' and consequently what loss is liable to result from a breach of contract in that ordinary course. This is the subject
G > matter of the 'first rule' in *Hadley v Baxendale*. But to this knowledge, which a contract-breaker is assumed to possess whether he actually possesses it or not, there may have to be added in a particular case knowledge which he actually possesses, of special circumstances outside the 'ordinary course of things', of such a kind that a breach in those special circumstances would be liable to cause more loss. Such a case
H > attracts the operation of the 'second rule' so as to make additional loss also recoverable.
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> (5) In order to make the contract-breaker liable under either rule it is not necessary that he should actually have asked himself what loss is liable to result from a breach. As has often been pointed out, parties at the time of contracting contemplate not the breach of the contract, but its
I > performance. It suffices that, if he had considered the question, he would as a reasonable man have concluded that the loss in question was liable to result (see certain observations of Lord du Parcq in the recent case of *A/B Karlshamns Oljefabriker v Monarch Steamship Co Ltd* [1949] AC 196).

(6) Nor, finally, to make a particular loss recoverable, need it be proved that upon a given state of knowledge that defendant could, as a reasonable man, foresee that a breach must necessarily result in that loss. It is enough if he could foresee it was likely so to result. It is indeed enough, to borrow from the language of Lord du Parcq in the same case, at p 158, if the loss (or some factor without which it would not have occurred) is a 'serious possibility' or a 'real danger'. For short, we have used the word 'liable' to result. Possibly the colloquialism 'on the cards' indicates the shade of meaning with some approach to accuracy.

The analysis of Asquith LJ was subjected to a critical review by the Law Lords in *Koufos v Czarnikow* [1969] 1 AC 350; [1967] 3 All ER 686; [1967] 3 WLR 1491 but has 'remained unimpaired as the classic authority on the topic' (per Donaldson J in *Aruna Mills v Dhanrajmal Gobindram* [1968] 1 QB 655; [1968] 1 All ER 113; [1968] 2 WLR 101) except on two matters, first, the reference to losses as being foreseeable should now read as referring to losses as having been in the parties' contemplation and secondly, the colloquialism 'on the cards' is rejected.

Loss of right to continue hiring under the hire-purchase agreement

I now turn to the loss of the right to continue hiring the said tractor under the said agreement. The plaintiff was entitled to hire the said tractor under the said agreement until completion of his instalment payments under the said agreement but for the illegal seizure of the machine by the defendant. If he had been allowed to continue with all his instalment payments, the net result would have been that the plaintiff would have become the owner of the said tractor. The loss of the right to continue hiring the said tractor until the plaintiff became the owner of the said tractor was surely within the contemplation of the parties.

Had not the said tractor been sold by the defendant, the court would have ordered that the said tractor be returned to the plaintiff in which case the plaintiff on being returned the said tractor would have been obliged to continue paying his monthly instalments as agreed in the said agreement. The defendant has however sold the said machine and it seems to me whatever price was paid for it should represent the market value of the machine. That and less whatever the balance owed by the plaintiff under the said agreement should be the amount that should be paid back to the plaintiff by the defendant for the loss of the right to hire the said machine until such time through payment of all instalments under the said agreement he would have become owner of the said machine. The plaintiff did not adduce any evidence as to the value of the said tractor at the time of the illegal seizure. The price of the said tractor when sold after seizure was not disclosed by the defendant either. However, the defendant had valued the said tractor in the 5th Schedule notice under s 16 dated 21 October 1981 (see exh A, p 14) at RM25,000, and I think I can rely on that, it being the offer price of the defendant to the plaintiff who was notified that he could request the defendant to sell the machine to any cash buyer he could introduce. At that time, the plaintiff owed the defendant RM23,747.94 on the hire purchase agreement (see the same exhibit under item 3, para (b))

and the plaintiff is entitled to receive the difference of RM1,252 (rounded to the nearest ringgit) between these two amounts from the defendant as one item of loss.

Loss under items (a) and (b) remote

The plaintiff also suffered loss as a result of being deprived of the use of the said tractor. The defendant, being in the business of selling tractors to persons like the plaintiff, would have been aware that the likely result of the plaintiff being without the said tractor was that his business involving the use of the tractor would have been adversely affected in the ordinary course of things and that he would have had to seek alternative means to overcome the loss of the use of the said machine. No evidence was adduced, and I do not think that it could have been imputed, that the defendant was aware that the plaintiff was using the said tractor under special circumstances. The claim under item (a) was for wages paid to two drivers of a vehicle, a caterpillar shovel, which could not be used because of the unavailability of the said tractor for 11 days, from the day the said tractor was seized till one day before another tractor was hired on 15 October 1981. According to the defendant, the shovel machine could not be used as, 'the whole work involved three machines and vehicles — the shovel is the first machine used to get earth and load it into the lorry. The lorry being the second vehicle will transport the earth to the place where the road is to be built. After the lorry has unloaded earth the tractor is used to push and level the earth on the road surface'. The plaintiff said the amount RM480 'is the minimum cost of operating the shovel machine which includes two drivers' salaries per day as the machine used two drivers'. These wages for two drivers for 11 days may be recoverable if the defendant had been aware that the said tractor was used in a special way with two other vehicles but there is no evidence to that effect and it certainly cannot be imputed that the defendant had knowledge of these special circumstances outside the ordinary course of things and the claim under item (a) is disallowed as indeed the claim under (b) which is a claim for the cost of the hire of four lorries which could not be used for 11 days.

Loss under item (c)

The plaintiff said that 11 days after the seizure of the said tractor, he managed to hire a tractor from his brother for a project at a sugar plantation at Padang Terap. He said he hired the tractor from 15 October 1981 to 31 December 1985 at RM130 per day and at RM150 per day from 1 January 1986 to 31 December 1987. He said he used the tractor for 24 to 25 days a month. His brother, PW2, gave similar evidence as to the rates for the hire of the tractor.

Counsel for the defendant disputed the cost for the hire of the tractor when he cross-examined the plaintiff and his brother and, although the plaintiff and his brother stated they had documentary evidence to show the cost of the hire, no documentary evidence was produced and these two persons were given ample time to produce the documents. I have my

doubts about the rates claimed by the plaintiff and his brother and my estimate of the cost of hire of a tractor in the early 1980s is that it was probably RM100 per day.

The plaintiff claimed he continued to use the tractor of his brother's till 31 December 1987, a period of well over six years. Counsel for the defendant naturally protested at the clearly unreasonable period for the hire of an alternative tractor. It has to be stated that senior counsel for the plaintiff did think that period as being long as well, as he did state that it is difficult to determine a proper cut-off point.

In my view, the period of hire of the tractor from the beginning of 1982 should be excluded as the evidence of the plaintiff shows that a separate entity, a private limited company, Tong Kheng Boon Sdn Bhd (with the defendant and his wife as shareholders), took over the contracts of the plaintiff from the beginning of 1982 and I can see no nexus between the company and the personal loss of the use by the plaintiff of the tractor that had been wrongfully seized from him. In the circumstances, the claim of the plaintiff for the hire of the brother's tractor is only allowed from 15 October to 31 December 1981. Taking into account that the tractor was hired for 24 days in one month, the number of days the tractor was hired was most probably for 30 days. To this figure has to be added the 10 days the plaintiff was without a tractor starting from the day his tractor was seized until one day before he hired his brother's tractor as the plaintiff would have to be compensated for the loss of the use of the tractor for those days as well. The plaintiff is thus entitled to compensation for 40 days at RM100 per day making it RM4,000.

To sum up, the plaintiff is not entitled to the loss under items (a) or (b). He is entitled to RM1,252 for the loss of the right to continue hiring the said tractor as well as to RM4,000 for 40 days under item (c) from 4 October to 31 December 1981. Interest on judgment sum at 4%pa from writ of summons to the date of judgment and at 8%pa from the date of judgment to the date of satisfaction. Costs to the plaintiff.

Order accordingly.

Reported by Anne Khoo